

BEFORE THE ARIZONA CORPORATION COMMISSION

ROBERT "BOB" BURNS - Chairman
BOYD DUNN
SANDRA D. KENNEDY
JUSTIN OLSON
LEA MÁRQUEZ PETERSON

DOCKET NO. S-21106A-20-0173

NOTICE OF OPPORTUNITY FOR HEARING

REGARDING PROPOSED ORDER TO CEASE

AND DESIST, ORDER FOR RESTITUTION,
ORDER FOR DAMAGES - FURTHER REMEDIES

ORDER FOR ADMINISTRATIVE PENALTIES AND ORDER FOR OTHER AFFIRMATIVE

AND ORDER FOR OTHER AFFIRMATIVE ACTION

Respondents.

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondents Richard D. Saba Jr., and Saba Tooth Tiger, LLC doing business as Saba Investments have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division also alleges that Richard D. Saba Jr. is a person controlling Saba Tooth Tiger, LLC doing business as Saba Investments within the meaning of A.R.S. § 44-1999(B), so that Richard D. Saba Jr. is liable under A.R.S. § 44-1999(B) to the same extent as Saba Tooth Tiger, LLC doing business as Saba Investments for its violations of the anti-fraud provisions of the Securities Act.

L.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, and the Securities Act.

II.

RESPONDENTS

2. Saba Tooth Tiger, LLC ("STT") is a member-managed limited liability company that was organized under the laws of the state of Arizona in April of 2011. For all times relevant, STT was doing business as Saba Investments. Neither STT nor Saba Investments have been registered with the Commission as a securities salesman or dealer. For all times relevant, Richard D. Saba Jr. has been the statutory agent and sole managing-member of STT.

3. During the relevant time-period, from at least 2014, through at least 2018, Richard D. Saba Jr. ("Saba") has been a resident of Arizona and a real estate broker licensed in Arizona. In April of 2020, the Arizona Department of Real Estate suspended Saba's real estate broker license. Saba has not been registered with the Commission as a securities salesman or dealer.

4. STT doing business as Saba Investments, and Saba may be referred to collectively as "Respondents."

III.

FACTS

5. During the relevant time-period, between 1999 through at least 2018, Respondents sold items on eBay Inc. ("eBay"). According to Saba, he bought "collectibles" and a variety of different items from: "online; Craigslist; pawnshops; and garage sales" and usually sold these items on eBay for a profit. At all times relevant, Respondents operated their eBay business out of Saba's residence in Arizona, and stored inventory there.

6. According to Saba, in or about 2014, he determined that he "wanted to grow" the eBay business by raising investment capital from "outside investors." In 2014, Saba met with Conrad Coggeshall ("Coggeshall") to discuss growing the Respondents' eBay business. At all times relevant, Coggeshall was registered and licensed in Arizona respectively as a securities salesman and investment adviser representative. During this meeting, Saba represented to Coggeshall that his eBay business was doing great and that he was looking for investors to raise additional capital. Saba further

1 represented that he was “making hundred percent on every product” that he sold online. Shortly
2 thereafter, Coggeshall personally invested \$5,000 in Saba’s eBay business.

3 7. Several months later, Saba met again with Coggeshall at his office and Saba
4 represented that he was looking for more investors because “his business was going very well” and
5 he wanted to expand his business. Saba further represented that he would pay investors a “high
6 interest rate.” Saba agreed to pay Coggeshall commissions for finding investors for the Respondents’
7 securities offerings.

8 8. Shortly thereafter, Coggeshall advised at least nine of his advisory clients to invest in
9 the Respondents’ securities offerings. Coggeshall represented to his clients that Saba was running a
10 successful eBay business under the name of STT, and the Respondents were raising investment
11 capital to purchase inventory, in particular used ink and toner cartridges, for the purpose of selling
12 these items on eBay for a profit.

13 9. From at least June of 2014, through at least May of 2018, Respondents offered and
14 sold securities in the form of promissory notes and/or investment contracts (hereinafter, “Note(s)”)
15 within or from Arizona to at least thirty-one investors (“Investors”), of which twenty-nine of the
16 Investors were Arizona Residents. During the relevant time-period, the Investors collectively
17 invested at least \$2,234,600.01 in the Respondents’ securities offerings; in exchange the Investors
18 received Notes that were issued by Saba and/or Saba Investments, which promised to pay between
19 7.5% - 50% interest semi-annually.

20 10. Respondents represented to the Investors that they were raising investment capital to
21 purchase “collectible items” [inventory] for the purpose of selling these items on eBay for a profit.
22 And, the Investors’ investment returns would be paid from the profits generated through the
23 Respondents’ eBay sales proceeds.

24 11. The Investors’ investment funds were deposited or wired into STT’s business account
25 and/or Saba’s personal bank accounts. At all times relevant, Saba was the sole signatory for STT’s
26 business account and his personal bank accounts.

1 Respondents' Notes

2 12. During the above relevant time-period, Saba and/or Saba Investments issued at least
3 three different versions of their Notes to various Investors. All versions of the Notes contained the
4 aforementioned promised returns on investments; however, each version had a unique title, and listed
5 different terms. The three versions of the Respondents' Notes were respectively titled: Saba
6 Investments Agreement(s) ("SIA Notes"); EBay [sic] Investment Agreement(s) ("EIA Notes"); and
7 Lending Agreement(s) ("LA Notes").

8 13. The SIA Notes were issued by Saba Investments and contained in sum and substance
9 the following same or similar terms:

- 10 • Saba was the founding member of Saba Investments;
- 11 • Saba Investments "started out as a hobby" and has grown into a "profitable company;"
- 12 • "Saba Investments has cut out a profitable niche" and has been in business "solely
13 through Ebay [sic] for 17 years;"
- 14 • "We primarily serve small business owners ... that rely on our ability to provide
15 overnight supplies ... we do not depend on any one client to purchase our goods to be
16 successful;"
- 17 • "As our growth exceeded company expectations, we have brought on outside
18 investors ... to help increase the business;"
- 19 • Saba Investments promised to pay returns on investments ranging from 7.5% to 12.5%
20 semi-annually;
- 21 • All investments will be held and invested for one year without the right of redemption;
- 22 • Following the one year holding period Investors are "required to provide a 90-day
23 written notice prior to any redemption ... otherwise investment corpus will remain
24 perpetual [sic] receiving payments" of the promised interest rate;

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26 ///

- “All outside investments will be backed by equal amounts of cash and inventory to 100% of the investor’s principle [sic];
- “If there was an unprecedented liquidation need the company would be able to meet the need ... you [the Investor] will never assume any inventory or non-cash items;” and
- “The company has never missed payments or liquidation events in seventeen years of business.”

14. The EIA Notes were issued by Saba and contained in sum and substance the following same or similar terms: (1) Saba promised to pay returns on investments ranging from 12.5% to 35% for a term of six months; (2) Investors were required to provide advance notice to collect their principal investments at the end of the six month holding period; (3) Investors had the discretion to “roll the principal over for another 6 months and collect the interest due at the end of the 6 month period;” and (4) Saba “personally” guaranteed the return of the investments, on several of the EIA Notes.

15. The LA Notes were issued by Saba and contained in sum and substance the following same or similar terms:

- Promisor agreed “to provide financial capital to Saba for his online Ebay [sic], Criagslist [sic] and other marketplace transactions in exchange for a set return” on Promisor’s investment;”
- Any portion of the investment cannot be withdrawn any earlier than one year and six months. After the holding period, the initial investment cannot be withdrawn by Promisor without giving Saba a ninety-day advanced notice;
- Saba promised to pay returns on investments ranging from 12.5% to 50% semi-annually;

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- “The construction, validity and interpretation of this Agreement shall be governed by the internal law, and not the law of conflicts, of the State of Arizona;” and
- “If Saba defaults in the performance of any obligation, the Promisor may declare the principal amount and any interest due owing under this Agreement immediately due and payable.”

Respondents Paid Non-Disclosed Commissions to Coggeshall

16. From January of 2016, through November of 2016, Respondents paid Coggeshall \$121,250 in commissions. Respondents paid Coggeshall 10% commissions from a portion of the investment funds received from some of Coggeshall’s clients that invested in the Respondents’ securities offerings. According to Saba, Coggeshall directly received his clients’ investment funds and provided those funds to Saba. Whenever Coggeshall gave Saba those investment funds from his clients, Coggeshall was given commissions upfront from a “percentage of whatever” Coggeshall gave Saba.

Saba Admissions

17. Saba made the following admissions: (1) Coggeshall was paid commissions from a portion of the Investors’ investment funds; (2) Respondents failed disclosed to several Investors that a portion of their investment funds would be used to pay commissions to Coggeshall; (3) The Respondents’ Notes do not contain any disclosures regarding the Investors’ investment funds being used to pay commissions; (4) Saba admitted, that he did not personally know any of the nine Investors that were Coggeshall’s clients, prior to their investments; (5) Saba did not verify or ask several of the Investors about the financial status and investment history; (6) Saba does not recall ever discussing with Investors any risks involved with the Respondents’ securities offerings; and (7) Some Investors were not paid back their promised interest and/or did not receive the return of their principal investments; and (8) Since at least 2015, Respondents’ eBay business has had several slow months

1 selling inventory on eBay, and on multiple occasions Saba and STT borrowed money from merchant
2 cash advance companies ("MCA Company or MCA Companies").

3 **Merchant Cash Advances**

4 18. According to Saba, since at least 2015, he and STT began borrowing money from
5 MCA Companies. Saba used the funds: as a cash reserve; to cover "business expenses;" and to
6 "possibly" make interest payments to some of the Investors. Saba stated he was "approached" by
7 several MCA Companies that offered him high interest loans. Saba had to provide these MCA
8 Companies with "statements" that reflected how much "sales" Saba and/or STT did within a certain
9 time-period, in order to get the cash advances.

10 19. Saba admitted that since 2015, he and STT received at least numerous merchant cash
11 advances. According to Saba, Respondents had to pay off the merchant cash advances within a short
12 period of time and was required to make daily payments on all of the merchant cash advances until
13 they were paid in full.

14 20. Between November of 2017, and May of 2018, Saba and STT had entered into at least
15 eleven merchant agreements and/or future receivables agreements with numerous MCA Companies.
16 During the relevant time-period, Saba and/or STT incurred at least \$965,993 debt from these
17 merchant agreements and/or future receivables agreements.

18 21. The merchant agreements and/or future receivables agreements all contained the
19 following same or similar pertinent terms: merchant hereby sells, assigns, and transfers to the MCA
20 Company (making the MCA Company the absolute owner) in consideration of the funds provided,
21 the specified percentage of merchant's future accounts, contract rights and other obligations arising
22 from or relating to the payment of monies from merchant's customers and/or third party payors in
23 the ordinary course of the merchant's business, for the merchant's sale of goods or services until the
24 specified amount has been delivered by the merchant to the MCA Company.

25 22. Saba admitted that he did not pay back "all of" the merchant cash advances. Saba
26 further admitted, that several of the MCA Companies filed UCC actions against Saba and STT and

1 received "confessions of judgments" against Saba and STT. According to Saba, he does not recall if
2 he disclosed to Investors any of the confessions of judgments filed against Saba and STT.

3 23. From at least November of 2017, through at least July of 2018, there have been at
4 least five confessions of judgments filed against Saba and STT. The total amount owed on the
5 confession of judgments was at least \$484,186.

6 24. Between 2015 through 2017, several Investors received their promised interest
7 payments from the Respondents. Respondents paid some of these Investors their interest payments,
8 via checks issued from STT's business account. However, in or about 2018, Saba represented to some
9 of the Investors that he was having financial difficulties, and shortly thereafter stopped making the
10 promised payments on the Investors' Notes.

11 25. The Investors collectively invested \$2,234,600.01 and received \$872,500.50 in return.
12 The remaining principal owed is \$1,362,099.51.

13 **Misrepresentations and Omissions of Material Facts**

14 26. Respondents failed to disclose to several Investors that Respondents paid Coggeshall
15 commissions from a portion of their investment funds.

16 27. Respondents failed to disclose to several Investors, that since 2015, the Respondents'
17 eBay business has had several slow months of selling inventory on eBay.

18 28. Respondents failed to disclose to several Investors that for the year of 2015,
19 Respondents' eBay business did not generate any profit.

20 29. Respondents failed to disclose to numerous Investors, that from at least November of
21 2017, through May of 2018, Saba and STT entered into at least eleven merchant agreements and/or
22 future receivables agreements and incurred a significant amount of debt, which placed the Investors'
23 investments at risk.

24 30. Respondents misrepresented to several Investors that their investment funds would
25 only be used to purchase inventory. Instead, Respondents used a portion of the Investors' investment
26 funds to pay commissions to Coggeshall.

31. From at least 2015, through at least 2016, Respondents misrepresented to several investors that Saba Investments was a “profitable company,” whose growth had exceeded expectations. Which is contrary to the following facts: in 2014, Respondents’ eBay business only generated approximately \$14,584 in profits; and in 2015, Respondents’ eBay business did not generate any profit.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

32. From on or about June of 2014 through at least May of 2018, Respondents offered or sold securities in the form of promissory notes and/or investment contracts, within or from Arizona.

33. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

34. This conduct violates A.R.S. § 44-1841.

v.

VIOLETION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

35. Respondents offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

36. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

37. In connection with the offer or sale of securities within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in

1 transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon
2 offerees and investors. Respondents' conduct includes, but is not limited to, the following:

3 a) Respondents failed to disclose to several Investors that Respondents paid
4 Coggeshall commissions from a portion of their investment funds;

5 b) Respondents failed to disclose to several Investors, that since 2015, the
6 Respondents' eBay business has had several slow months of selling inventory on eBay.

7 c) Respondents failed to disclose to several Investors that for the year of 2015,
8 Respondents' eBay business did not generate any profit;

9 d) Respondents failed to disclose to numerous Investor, that from at least November
10 of 2017, through May of 2018, Saba and STT entered into at least eleven merchant agreements and/or
11 future receivables agreements and incurred a significant amount of debt, which placed the Investors'
12 investments at risk.

13 e) Respondents misrepresented to several Investors that their investment funds
14 would only be used to purchase inventory. Instead, Respondents used a portion of the Investors'
15 investment funds to pay commissions to Coggeshall; and

16 f) From at least 2015, through at least 2016, Respondents misrepresented to several
17 investors that Saba Investments was a "profitable company," whose growth had exceeded expectations.
18 Which is contrary to the following facts: in 2014, Respondents' eBay business only generated
19 approximately \$14,584 in profits; and in 2015, Respondents' eBay business did not generate any profit.

20 38. This conduct violates A.R.S. § 44-1991.

21 **VII.**

22 **CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999**

23 40. From at least April of 2011, through the present, Saba has been the sole managing-
24 member of STT doing business as Saba Investments. Further, Saba has been the sole signatory of
25 STT's business account.
26

41. From at least June of 2014 through at least May of 2018, Saba directly or indirectly controlled STT doing business as Saba Investments within the meaning of A.R.S. § 44-1999. Therefore, Saba is jointly and severally liable to the same extent as STT doing business as Saba Investments for its violations of A.R.S. § 44-1991 from at least June of 2014 through at least May of 2018.

VIII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;

2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036; and

4. Order any other relief that the Commission deems appropriate.

IX.

HEARING OPPORTUNITY

Each Respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent requests a hearing, the requesting Respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting Respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

1 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20
2 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or
3 ordered by the Commission. If a request for a hearing is not timely made the Commission may, without
4 a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for
5 Hearing.

6 Persons with a disability may request a reasonable accommodation such as a sign language
7 interpreter, as well as request this document in an alternative format, by contacting Carolyn Buck,
8 ADA Coordinator, voice phone number (602) 542-3931, e-mail cdbuck@azcc.gov. Requests should
9 be made as early as possible to allow time to arrange the accommodation. Additional information
10 about the administrative action procedure may be found at
11 <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>

12 **X.**

13 **ANSWER REQUIREMENT**

14 Pursuant to A.A.C. R14-4-305, if a Respondent requests a hearing, the requesting Respondent
15 must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona
16 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days
17 after the date of service of this Notice. Filing instructions may be obtained from Docket Control by
18 calling (602) 542-3477 or on the Commission's Internet web site at
19 <http://www.azcc.gov/divisions/hearings/docket.asp>.

20 Additionally, the answering Respondent must serve the Answer upon the Division. Pursuant
21 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
22 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
23 addressed to Michael Shaw.

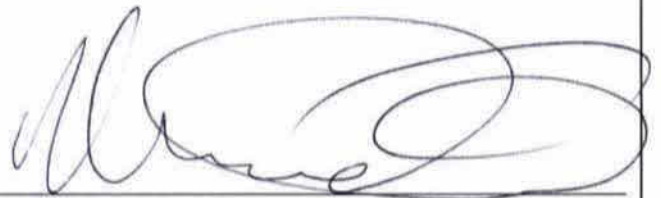
24 The Answer shall contain an admission or denial of each allegation in this Notice and the
25 original signature of the answering Respondent or Respondent's attorney. A statement of a lack of
26

1 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
2 denied shall be considered admitted.

3 When the answering Respondent intends in good faith to deny only a part or a qualification
4 of an allegation, the Respondent shall specify that part or qualification of the allegation and shall
5 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

6 The officer presiding over the hearing may grant relief from the requirement to file an Answer
7 for good cause shown.

8 Dated this 2nd day of June, 2020.

A handwritten signature in blue ink, appearing to read 'Mark Dinell', is written over a horizontal line.

Mark Dinell
Director of Securities